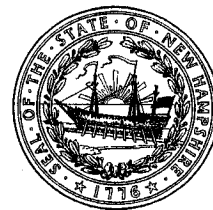




The State of New Hampshire
Department of Environmental Services
Water Council

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STATE OF NEW HAMPSHIRE
WATER COUNCIL

Decision & Order

on

Motion to Recuse

Docket No. 03-17 WC

Appeal of Daniel Osborn
In Re: Shoreland Protection Act Waiver Denial
Wetlands File # 2005-01071

Background

On September 29, 2005, Attorney Bernard H. Campbell filed a Petition for Appeal ("the Appeal") with the NH Wetlands Water Council ("the Council") on behalf of Daniel Osborn ("the Appellant"). The subject of the Appeal being the New Hampshire Department of Environmental Services, Water Division ("DES") Shoreland Protection Act Waiver Denial, file # 2005-01071.

On October 12, 2005 the Council voted to accept the appeal. Vice Chairman F. Wayne DiMarzio was appointed Presiding Officer, and a pre-hearing conference was scheduled for December 5, 2005.

On December 5, 2005 a pre-hearing conference was convened. Present were F. Wayne DiMarzio, Presiding Officer; Michael P. Sclafani, Appeals Clerk; K. Allen Brooks, Attorney for DES; Bernard H. Campbell, Attorney for the Appellant; Maggie and Daniel Osborn, Appellant; Collis Adams and Mary Ann Tilton, DES Wetlands Bureau; and Darlene Forst, DES Shoreland Program. It was decided at the pre-hearing conference that the appeal hearing will take place on March 8, 2006.

On December 12, 2005 Attorney Brooks filed a *Motion to Recuse Vice Chairman F. Wayne DiMarzio* from further participation in this appeal on behalf of DES. In its motion, DES argues that certain off-the-record comments by Mr. DiMarzio at the pre-hearing conference demonstrate that he is incapable of impartially participating in this appeal. The motion requests that the Council recuse and prohibit Mr. DiMarzio from presiding over any hearing regarding this matter, from voting or otherwise participating in this matter, and from communicating *ex parte* with other Council members regarding this matter.

At its regular monthly business meeting on December 14, 2005, the Council voted 10-0 to grant the motion.

Order

Motion to Recuse Vice Chairman F. Wayne DiMarzio is GRANTED. Council Chairman John F. Bridges will preside over any hearings in this matter. The appeal hearing will convene as previously scheduled.

So Ordered for the Council by

COPY


Michael P. Sclafani, Appeals Clerk

December 21, 2005